Filed 12/15/16 In re J.Z. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re J.Z., a Person Coming Under the Juvenile Court Law.	C081232
BUTTE COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent, v. DWIGHT Z. et al., Defendants and Appellants.	(Super. Ct. No. J37235)

Dwight Z. and Jade Z., parents of the minor J.Z., appeal from the juvenile court's orders terminating parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)[1] Each contends there was a failure to comply with the inquiry and notice provisions of the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) We shall vacate the orders terminating

[1] Undesignated statutory references are to the Welfare and Institutions Code.

parental rights and remand for the limited purpose of permitting the juvenile court to comply with the inquiry and notice provisions of the ICWA.

FACTS[2]

Early in the dependency proceedings, mother advised the Butte County Department of Employment and Social Services (the Department) that she did not have Indian ancestry and was unaware of any such ancestry in father's family. As of the August 13, 2014, writing of the dispositional report, the Department reported they had sent an Indian Ancestry Questionnaire to father, but had not yet received a response from him. At the August 19, 2014, hearing, the juvenile court found that ICWA did not apply to this case. The Department received father's Indian ancestry form on August 15, 2014. Father stated he had Cherokee ancestry, and that "my mother's mom or grandma was Cherokee." He was unable to provide his mother's address or date of birth but listed her maiden and married names.

On December 16, 2014, the Department sent the ICWA notice forms to various tribes. The form notice lists the address and birthdate of father's mother (paternal grandmother) but does not provide any information on the paternal great-grandmother. Between December 31, 2014, and February 4, 2015, the Department filed letters from the United Keetoowah Band of Cherokee Indians, the Cherokee Nation, and the Eastern Band of Cherokee Indians each stating the tribes had no evidence to support finding the child was eligible for enrollment.

At subsequent hearings in March, April, May, June, July, October, and December 2015, the juvenile court made no further rulings on the applicability of ICWA. The minute orders for those hearings refer to the ICWA ruling on August 19, 2014. Nor is there any reference to ICWA after the August 2014 ruling. Paternal grandmother was

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[2] Because the sole issue raised by either parent on appeal is related to the ICWA inquiry and notice, only the facts relevant to that issue are related here.

present in court during the December 2015 permanency planning hearing. In addition, father provided the Department with his sister's telephone number and address.

DISCUSSION

The parents contend the Department and the juvenile court did not comply with the inquiry and notice provisions of the ICWA by failing to contact the paternal grandmother for additional information regarding the paternal great or great-great-grandmother. They also contend the trial court erred by failing to rule on the applicability of ICWA after receiving notice father might have Indian ancestry. We agree.

Congress passed the ICWA "to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture . . . .' [Citations.]" (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195.)

A social worker has "an affirmative and continuing duty to inquire whether a child [in a section 300 proceeding] is or may be an Indian child . . . ." (§ 224.3, subd. (a).) Furthermore, if the social worker "has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information" required to be provided in the ICWA notice. (§ 224.3, subd. (c).)

Father claimed Cherokee heritage through his paternal great-grandmother, but had no information on her. There is nothing in the record that indicates what efforts the Department made to acquire any information about the paternal great-grandmother. However, the Department had contact with relatives who likely could have provided the missing information about the paternal great-grandmother. Father provided the Department with his sister's address and phone number. The Department was also in

contact with paternal grandmother. The Department had her address, and she appeared in court at least once. Presumably, paternal grandmother would have had information about her mother, such as her name and birthdate. Under these circumstances, it was error for the Department not to inquire of paternal relatives, particularly paternal grandmother, to gain additional information.

The Department argues the error is harmless because the parents do not show it is reasonably probable that inquiry with the paternal grandmother would have led to a different result. (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1162.) ICWA error is harmless when a parent claims he or she was never asked about Indian heritage during the dependency but fails to state on appeal that he or she has Indian heritage. (See, e.g., *In re N.E.* (2008) 160 Cal.App.4th 766, 770-771; *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) Error in ICWA notice also "may be held harmless when the child's tribe has actually participated in the proceedings [citation] or when, even if notice had been given, the child would not have been found to be an Indian child, and hence the substantive provisions of the ICWA would not have applied [citations]." (*In re S.B.*, at p. 1162, fn. omitted.)

This case does not present the situation found in these harmless error cases. Mother claimed no Indian heritage, but father did, specifically through his grandmother (the paternal great-grandmother). The record reveals no information about her and no efforts by the Department to obtain such information. The error here was easy for the Department to avoid as it had contact with, and information on, a number of potential sources of information about the paternal great-grandmother because it had contact information of the paternal aunt, and had the contact information of paternal grandmother who also appeared in court. There is no reason to think paternal grandmother could not provide the requisite information about her mother, and if she can, the Department will be able to include her information in a revised notice to the tribes.

The Department's error was not harmless, as it overlooked what are potentially the best sources of information regarding father's claim of Indian heritage. A failure to conduct a proper ICWA inquiry requires a limited reversal of the orders terminating parental rights and a remand for proper inquiry and any required notice. (*In re A.B.* (2008) 164 Cal.App.4th 832, 839; *In re D.T.* (2003) 113 Cal.App.4th 1449, 1454-1456.)

DISPOSITION

The orders terminating parental rights are reversed, and the matter is remanded to the juvenile court for the limited purpose of satisfying the inquiry and notice requirements of the ICWA. The court is directed to order the Department to make a full inquiry regarding father's claim of Indian heritage through the paternal great-grandmother. If additional relevant information regarding father's claim of Indian heritage is obtained, the Department is to provide additional notice to the Bureau of Indian Affairs (BIA) and the relevant tribes. If there is no response, or if the tribes and the BIA determine that the minor is not an Indian child, the juvenile court shall make a ruling on the applicability of ICWA and reinstate the orders. However, if the tribes or the BIA determine that the minor is an Indian child, the juvenile court shall conduct a new selection and implementation hearing in conformance with all the provisions of the ICWA.

RAYE, P. J.

We concur:

NICHOLSON, J.

ROBIE, J.